

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of

Petition by AT&T for Declaratory Ruling
re Exemption of Phone-to-Phone Telephony
Services from Access charges

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WC Docket No. 02-361

**COMMENTS
OF THE CALIFORNIA RTCS**

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December 18, 2002

Attorneys for California RTCs

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Calaveras Telephone Company, Cal-Ore Telephone Co., Ducor Telephone Company, Evans Telephone Company, Foresthill Telephone Co., Kerman Telephone Co., Pinnacles Telephone Co., The Ponderosa Telephone Co., Sierra Telephone Company, Inc., The Siskiyou Telephone Company, and The Volcano Telephone Company (collectively the "California RTCs") respectfully submit these Reply Comments in response to the Commission's Public Notice DA 02-3184, released November 18, 2002. That Public Notice solicits comments on a petition filed by AT&T Corp. (AT&T) on October 18, 2002, in which AT&T asked the Commission to create a new exemption from access charges for phone-to-phone long distance telephone calls which AT&T alleges to be "Internet" traffic.

I. INTRODUCTION.

The California RTCs are incumbent small independent local exchange telephone companies, all of which are also Rural Telephone Companies (RTCs) as defined in the

Communications Act of 1934, as amended. Their service territories include the most rural areas of the State of California, and they range in size from companies serving a few hundred access lines to one company with approximately 20,000 access lines. Both interstate and intrastate access charges are critical sources of revenue for the California RTCs, since AT&T and other toll service providers extensively utilize the facilities of the California RTCs for the origination and termination of long distance traffic.

AT&T's petition attempts to portray its phone-to-phone long distance telephone calls as Internet telephony, when, in fact, the traffic is simply a long distance telephone call made between two end-users utilizing ordinary telephones and dialing protocols -- traffic which is originated, switched, transported, and terminated over the facilities of local exchange telephone companies. Such traffic is properly subject to access charges under current Commission rules, and AT&T offers no persuasive reasons why the Commission should create an exemption from access charges for this phone-to-phone long distance telephone traffic.

The Commission should reject AT&T's petition and maintain and affirm the applicability of its access charge rules to all forms of "phone-to-phone" long distance telephone traffic.

II. AT&T'S PHONE-TO-PHONE LONG DISTANCE TELEPHONE CALLS ARE PROPERLY SUBJECT TO LOCAL EXCHANGE CARRIER ACCESS CHARGES.

AT&T asserts in its petition that the access charges lawfully imposed on these phone-to-phone long distance telephone calls violate an alleged "congressional mandate" to preserve a competitive free market for the Internet. AT&T is, however, unable to cite any such mandate or other statutory authority which addresses, directly or indirectly, the exemption of any type of phone-to-phone long distance telephone calls from access charges because of a claimed

relationship of such calls to the Internet. Nor does AT&T explain how phone-to-phone telephone calls for which an interexchange carrier imposes charges upon the calling party qualify as "free" Internet traffic.

The United States Supreme Court has defined the Internet in the following terms:

"The Internet is an international network of interconnected computers" which "enable(s) tens of millions of people to communicate with each other and to access vast amounts of information from around the world."¹

The Internet is a system of computer-based communications; the term cannot correctly be applied to phone-to-phone long distance telephone calls. Voice communications can be transmitted over computer-related Internet connections, and such communications can be described as "voice over Internet" traffic. The phone-to-phone calling described in the AT&T petition, however, is not computer-related. It is functionally indistinguishable from other phone-to-phone long distance telephone calls, and there is no logical or legal basis for exempting such phone-to-phone long distance calls from access charges.

AT&T is attempting to clothe these phone-to-phone long distance telephone calls in the mantle of the Internet by allegedly transporting some portion of the traffic over facilities which also carry true Internet traffic. This does not, however, transmute a phone call into an Internet communication.

AT&T, as an interexchange carrier, can use any transmission technology it chooses to carry phone-to-phone long distance telephone calls to their destination. AT&T does not cease to become an interexchange carrier and become, instead, an ISP entitled to an access charge

¹*Reno v. American Civil Liberties Union* (1997) 521 U.S. 844, 849-850, emphasis added.

exemption because of the choice it makes regarding telephone call transmission technology. True Internet telephony does not utilize an interexchange carrier at all. The calling party connects to the Internet through an ISP and does not need or pay for the separate services of an interexchange carrier to complete the call.

The Commission is currently considering whether to classify various types of "broadband" services as "telecommunications services," which are subject to the Communications Act, as opposed to "information services," which are not subject to the Act. Phone-to-phone long distance telephone calls clearly fall on the telecommunications services side of these regulatory classifications, and the tortured logic of AT&T's petition can do nothing to change this obvious, common sense conclusion.

These phone-to-phone long distance telephone calls are "telecommunications services" being provided by an interexchange carrier, which is legally obligated to pay access charges for the LEC services utilized by the interexchange carrier to originate and complete the calls.

III. CONCLUSION.

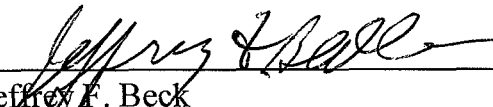
The Commission created the "ISP exemption" from access charges nearly twenty years ago, to promote the fledgling ISP industry, which was developing the Internet as a system of worldwide communications between and among computers. The Commission's policies underlying the ISP exemption have nothing whatever to do with the long distance telephone services being provided by AT&T, and the ISP exemption cannot justify a "free ride" for

AT&T's interexchange traffic over local exchange carrier facilities. AT&T's petition should be rejected.

Dated: December 18, 2002

Respectfully Submitted

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